



KLEIN LIEBMAN & GRESEN, LLC

BUSINESS VALUATION · FORENSIC ACCOUNTING · LITIGATION SUPPORT · CONSULTING

FEBRUARY NEWSLETTER

UPCOMING EVENTS

[David Gresen](#) will be one of the panelists on Monday March 25, 2019 from 6:00 p.m. to 8:50 p.m. for the Suffolk Academy of Law, Matrimonial Series #3. The program is titled "Matrimonial & Family Court Actions & the New Tax Law".

QDRO STEPS TO AVOID MALPRACTICE

You could be opening yourself up to malpractice if:

1. You are not Fully Verifying and Authenticating Retirement Benefits
2. You treat QDRO as an After-Thought and the Plan Participant Quits, Retires or Dies
3. You are not Auditing Your Client Files

Not sure what else you are missing?

Denisa has been educating attorneys on how to avoid these potential landmines and navigating and speeding up the QDRO process. She is available to Come to You and educate you and your staff in a "lunch or an after-work learn" session.

Please contact [Denisa Tova](#) with any inquiries

MATRIMONIAL CASES OF INTEREST

Belilos v. Rivera (App Div., 2nd Dep't)

Plaintiff (hereafter "the wife") and the defendant (hereafter "the husband") entered into a judgment of divorce dated October 29, 2015. The husband appeals certain awards including (1) award to the wife of 25% of the husbands enhanced earnings capacity ("EEC") and (2) distribution to the wife for one-half (50%) of the husband's interests in entities known as NAPA Management Service Corporation (hereafter "NMSC") and AP Long Island Management (hereafter "APLIM").

The EEC calculation is no longer applicable for actions commencing on January 26, 2016 and forward. However, in this instance, the action pre-dates January 26, 2016 and was therefore subject to equitable distribution. As determined in the O'Brien v. O'Brien matter, "Enhanced earnings from degrees and professional licenses attained

during a marriage are subject to equitable distribution." Further instruction was provided in the *Badwal v. Badwal* matter, stating that "it is incumbent upon the nontitled party seeing a distributive share of such assets to demonstrate a substantial contribution to the titled party's acquisition of that marital asset." In addition to the foregoing, the nontitled spouse also has the burden of proving the value of such EEC.

In this action, the wife retained a forensic expert to establish the value of the husband's EEC. Further, the wife was able to prove that she had substantial contribution to the husband's attaining his advanced degrees and certifications during the marriage. Accordingly, the Appellate Court upheld the Supreme Court's award of 25% of the husband's EEC to the wife.

The husband appealed the Supreme Courts award of 50% equitable distribution of the value of his business interests in NMSC and APLIM to the wife. As set forth in *Culen v. Culen*, "The Trial court has broad discretion in selecting the dates for the valuation of marital assets and, depending on the particular circumstances of the case, may appropriately fix different valuation dates for different assets". The *Grunfeld v. Grunfeld* matter also states that "courts have discretion to value 'active' assets such as a professional practice on the commencement date, while 'passive' assets such as securities, which could change in value suddenly based on market fluctuations, may be valued at the date of trial". NMSC and APLIM perform billing services for the husband's medical practice group. The Supreme Court determined these businesses to be passive in nature and, therefore, the Appellate Court upheld the ruling that a 50% equitable distribution award is appropriate for the wife.

[LINK TO DECISION](#)

Nacos v. Nacos (App Div., 1st Dep't)

Plaintiff (hereafter "the wife") and the defendant (hereafter "the husband") entered into a judgment of divorce dated August 1, 2017. Pursuant to the judgment, the wife was denied any claim to equitable distribution of the husband's minority ownership interest in a business known as Cabo New LLC (hereafter "Cabo").

The Supreme Court determined that the wife did not adequately meet her burden of establishing a value for the husband's minority interest in Cabo. The husband retained a court-appointed neutral appraiser to determine the value of Cabo. The husband provided said neutral appraiser with financial information. For reasons not explained, the wife did not obtain a valuation of Cabo. In addition, the husband is subject to the "strict" provisions of the operating agreement.

For these reasons, the Appellate Court upheld the Supreme Court's determination that the wife did not provide a basis of value upon which to award the wife equitable distribution of the value of the husband's interest in Cabo.

[LINK TO DECISION](#)

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